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ABSTRACT

This paper is part of a collection of 54 papers from the 48th annual conference of the Education Law Association held in November 2002. It discusses teacher evaluation by principals. Specifically, it presents findings of research that examined the nature of policy creation at the local board level in response to accountability legislation in North Carolina; the impact of North Carolina's accountability program on principals in their role as teacher evaluators; and the implications for principal-preparation programs. (The study was limited to schools in eastern North Carolina.) The findings reveal, among other things, that action plans have become an accepted method for dealing with the pressure administrators face to improve learning and that most of the actions plans were written for teachers who did not work in low-performing schools, which seems to indicate that, because this policy followed the model created by the state's school board association, the association may have significant influence over the creation of local policy. Implications of these findings indicate that principal-preparation programs need to help their students understand the legal implications of policy that utilizes action plans, and to examine how such programs prepare students to work with teachers to improve performance. (WFA)

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For the past three decades Congress and many state legislatures have been engaged in efforts to improve the quality of education in the nation's public schools. The origins of this effort to improve learning for all students in the public schools has been traced back to the civil rights movement, *Brown v. Board of Education of Topeka* (347 U.S. 483), and the publication of *Equality of Educational Opportunity* (Coleman et al., 1966). *Equality of Educational Opportunity* has been identified as "arguably, the most important and influential study ever concerned with the administration of America's schools (Haller and Kleine, 2001).

Federal efforts to influence school reform have come through requirements linked to federal assistance programs and through federal mandates. Through the *No Child Left Behind Act* (NCLBA), federal executive and legislative branches have established expectations regarding the quality of teaching and level of student achievement which states receiving federal funding are expected to meet. In his July 24, 2002 letter to state educational leaders, the Secretary of Education stated, "Accountability is central to the success of the *No Child Left Behind Act*: States need to set high standards for improving academic achievement in order to improve the quality of education for all students." The Secretary's call for accountability included consequences for schools that did not meet student performance goals. The letter noted that the ESEA "provides a list of consequences under 'school improvement,' 'corrective action' and 'restructuring' that allow States to take a range of actions. For example, under 'corrective action' the options range from more limited consequences such as hiring an outside expert to advise a school on how to make adequate yearly progress, to more significant measures such as replacing school staff or restructuring the internal organization of a school (<http://www.ed.gov/News/Letters/020724.html>)."

The reauthorized ESEA also addressed the quality of teachers working in the public schools. In section 1119 under Qualifications for Teachers and Paraprofessionals, it stated that "each local educational agency receiving assistance under this part shall ensure that all teachers...are highly qualified and that all teachers teaching in core academic subjects within the State are highly qualified not later than the end of the 2005-2006 school year." The legislation extended its reach beyond the specific programs and personnel covered by federal funding stating that "each local educational agency receiving assistance under this part shall develop a plan to ensure that all teachers teaching within the school district served by the local educational agency are highly qualified not later than the end of the 2005-2006 school year (<http://www.ed.gov/legislation/ESEA02/>)."

Efforts by the federal government to improve public education have been more than matched by state initiatives. Between 1990 and 2000 many state legislatures initiated public education restructuring efforts. Most of these efforts included a focus on improved teaching and improving student learning as measured by a state developed or nationally validated test. North Carolina was one state that received media attention and some recognition for its efforts to improve the quality of education for its students.

North Carolina's public school reform initiative was grounded in legislation that called for the creation of a school-based management and accountability program that would ensure improvement in student performance. That intent was expressed in North Carolina General Statute (NCGS) 115C-105.20. This legislation charged the State Board of Education to "develop a School-Based Management and Accountability Program." This legislation stated, "The primary goal of the Program shall be to improve student performance." It is this legislation and the impact it has had on public school principals as the school's chief change agents, as teacher evaluators, and as the school's professional development coordinator that this research was aimed. The conditions under which North Carolina principals work were not exactly like the conditions under which principals work in other states, but some similarities between the issues, problems, and opportunities all principals face as a result of the accountability movement that has swept the nation. This research may be instructive for principals who have faced or will face situations similar to those North Carolina principals have faced. It may also be of value to individuals who seek the most effective means to prepare principals for the accountability related world in which they will work.

The research presented in this paper examined the nature of policy creation at the local board level in response to accountability legislation, the impact of North Carolina's accountability program on principals in their roles as teacher evaluators, and the implications for principal preparation programs. This research included an analysis of legislation and policy surrounding accountability driven teacher evaluation, data on creation of local school board policies created in response to state legislation, case study and survey data on how principals are using an evaluation/development tool created to help them improve instruction and remove ineffective teachers, and data on how prepared principals feel to use that tool. This study was conducted in eastern North Carolina. It is limited in that it is focused on the legislation in one state and further limited by the fact that principals surveyed are all from the region of the state that is east of Interstate Highway 95.

Background

North Carolina has received national attention for its school reform efforts. The State Department of Public Instruction's web site has listed a number of the accomplishments that were directly associated with the state's accountability movement (<http://www.ncpublicschools.org>). That list includes the following:

"North Carolina's accountability program, the ABCs of Public Education, was used as a model for the new federal education legislation, "No Child Left Behind" Act, signed into law by President Bush on Jan. 8. The bill requires annual testing in reading and mathematics in grades 3 - 8 with schools being required to show progress each year in the percentage of students proficient in these areas. North Carolina has required end-of-grade tests since 1993 and has held schools accountable for testing results since 1996.

North Carolina continues its steady progress to lead the nation in education by 2010, according to the second annual First in America 2001 Progress Report for K-12 schools released by Gov. Mike Easley and the Education Cabinet in February 2002. The latest analysis of the state's performance found that we improved in three of the five goal areas in 2001: High Student Performance, "C+," Safe, Orderly and Caring Schools, "B-

;" and Strong Family, Business and Community Support, "B." We held steady on Every Child Ready to Learn, "C+;" and on Quality Teachers and Administrators, "B-."

North Carolina's testing program is tops in the nation, according to a new study released in June 2002 by The Princeton Review. States were ranked on 25 indicators in four criteria: test alignment to the states' curriculum standards, test quality, openness of the testing program to public scrutiny, and the extent to which the accountability system is used to support school improvement. North Carolina received a total score of 178.5 on the 200-point scale and a B+ for alignment, an A for test quality, a B for openness, and an A for policy. The Princeton Review is a national provider of test preparation and college admissions services.

North Carolina received the highest score of any state for Improving Teacher Quality, according to Education Week's sixth annual 50-state report card on public education released in January 2002. A letter grade of "B+" was the highest grade given to any state in this category. This is the second year in a row North Carolina has led the nation in this significant area. North Carolina also was credited for being a pioneer state in early-childhood efforts, thanks to Smart Start, the TEACH program, and the Governor's More at Four program. The state received a "B" on Standards and Accountability.

In 2000-01, the fifth year of the ABCs of Public Education for K-8 schools and the fourth year for high schools, 71.7 percent of students in grades 3 - 8 were considered proficient in reading and mathematics, up 10 points from 1996-97. In regards to school performance, 24.1 percent made exemplary growth; 35.6 percent made expected growth; 38.8 percent received no recognition; and 1.4 percent were deemed low performing. Overall, 59.7 percent met either expected or exemplary growth standards."

When the North Carolina General Assembly enacted NCGS 115C-105.20, the State Board of Education's answer to its charge to "develop a School-Based Management and Accountability Program" came in the form of a set of policies generally known as the ABC Program. The Board's answer to the legislative charge to make improved "student performance" the primary goal of the program came in the creation of end-of-grade and end-of-course assessments designed to enable the state to evaluate its schools. The ABC Program included rewards for the schools that succeeded and sanctions for the schools that did not. To further support the ABC Program the legislature passed additional statutes. The impact of this legislation fell directly upon principals and teachers in the state's public schools. Classification as a low performing school came with severe consequences for principals and teachers. As the instructional leader and primary evaluator of teachers, North Carolina principals have found themselves in a new and precarious employment position. Under the provisions established by NCGS 115C-105.39, "within 30 days of the initial identification of a school as low-performing...the superintendent (was required to) take one of the

following actions concerning the school's principal: (i) recommend to the local board that the principal be retained in the same position, (ii) recommend to the local board that the principal be retained in the same position and a plan of remediation should be developed, (iii) recommend to the local board that the principal be transferred, or (iv) proceed under G.S. 115C-325 to dismiss or demote the principal. The principal may be retained in the same position without a plan for remediation only if the principal was in that position for no more than two years before the school is identified as low-performing." The "low-performing" designation is assigned to schools whose state end-of-grade or end-of-course test scores fall below state established criteria. This statute significantly increased the pressure on principals to improve the performance of their students on state developed assessments and to improve the performance of teachers who are primarily responsible for student performance.

The accountability movement in North Carolina coincided with legislation that moved principals from employment as tenured employees to employment as contract employees. NCGS 115C-287.1 required that beginning July 1, 1995, all persons employed as school administrators shall be employed by contract with a local board of education "for two to four years." This statute further provided that "an initial contract between a school administrator and a local board of education...may be for a period of less than 12 months provided the contract becomes effective on or before September 1. A local board of education may, with the written consent of the school administrator, extend, renew, or offer a new school administrator's contract at any time after the first 12 months of the contract so long as the term of the new, renewed, or extended contract does not exceed four years. Rolling annual contract renewals are not allowed." This legislation enabled local superintendents and boards to more easily non-renew principals.

Under this legislation principals were protected as if they were tenured employees during the period of the contract. The statute provided that "the school administrator shall not be dismissed or demoted during the term of the contract except for the grounds and by the procedure by which a career teacher may be dismissed or demoted as set forth in G.S. 115C-325." The statute further provided that the superintendent's "reasons may not be arbitrary, capricious, discriminatory, personal, or political." The decision not to renew a principal's contract was also subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. The fact reminded, however, that the principal was under more pressure to improve their schools since the enactment of NCGS 115C-287.1. Since school improvement in North Carolina has been defined by student performance on state tests, principals were under added pressure to improve teaching in their schools.

The principal's duty to support teachers in the improvement of instruction and to evaluate certified employees was stated in NCGS 115C-288. In addition, principals in low-performing schools were required to "develop action plans (established under G.S. 115C-333) and...monitor an employee's progress under an action plan." This legislation clearly stated that the principal was responsible for the improvement of teaching and for working with teachers to improve instruction in the school.

In response to feedback from principals and other school administrators as well as data on the termination of teachers who had obtained tenured status, the General Assembly enacted legislation that facilitated the documentation of inadequate performance. Inadequate performance was listed first among the reasons for which a career (tenured) employee could be dismissed under NCGS 115C-325 prior to the passage of accountability

legislation. The expedited documentation of inadequate performance was written into statute with the passage of NCGS 115C-333. This statute addressed the evaluation of teachers in low-performing requiring that "school administrative units shall evaluate at least once each year all certified employees assigned to a school that has been identified as low-performing, but has not received an assistance team." Further the evaluation was required early enough in the school year to provide adequate time for the development and implementation of an action plan if a teacher was required to have one under this statute. NCGS 115C-333 required an action plan under the following conditions:

" If a certified employee in a low-performing school receives an unsatisfactory or below standard rating on any function of the evaluation that is relate to the employee's instructional duties, the individual or team that conducted the evaluation shall recommend to the superintendent that: (i) the employee receive an action plan designed to improve the employee's performance; or (ii) the superintendent recommend to the local board that the employee be dismissed or demoted. The superintendent shall determine whether to develop an action plan or to recommend a dismissal proceeding. Action plans shall be developed by the person who evaluated the employee or the employee's supervisor unless the evaluation was conducted by an assistance team or an assessment team. If the evaluation was conducted by an assistance team or an assessment team, that team shall develop the action plan in collaboration with the employee's supervisor. Action plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board shall develop guidelines that include strategies to assist local boards in evaluating certified employees and developing effective action plans within the time allotted under this section."

This legislation also allowed local boards to adopt policies for the development and implementation of action plan for employees who are not working in low-performing schools. This local policy was to address certified teachers who received below standard or unsatisfactory ratings on an evaluation who where not dismissed, demoted, or non-renewed. If employees working under action plans had not improved their performance enough to receive a rating of satisfactory or better, the superintendent was empowered to recommend that the employee be dismissed or demoted. Further, the statute provided that the results of the second evaluation constituted substantial evidence of the employee's inadequate performance. Regarding the definition of inadequate performance, NCGS 115C-325 provided that consideration was to be given to regular and special evaluation reports prepared in accordance with local policy and with standards adopted by the local board.

Methodology

This research was designed to learn more about how North Carolina's accountability legislation and policies have impacted the North Carolina principals in their role as a teacher evaluator. Specifically the research was designed to answer the following questions:

- How did local educational agencies (LEA) respond to the requirement to create policy to govern the creation of action plans for teachers in their schools that are not classified as low-performing?
- Are principals using action plans in eastern North Carolina?
- How have principals been prepared to write action plans in eastern North Carolina?
- Do principals feel that action plans are useful tools that assist them in their efforts to improve learning in the school?
- What are the potential legal implications for principals using action plans?
- What are the implications of legislative and policy initiatives aimed at improving student performance for principal preparation programs?

This research was conducted through a telephone survey of North Carolina LEA's, interviews with select principals who have used action plans, and a survey of 57 eastern North Carolina principals. In addition, telephone interviews were conducted with officials at the North Carolina Department of Public Instruction, at the North Carolina Association of Educators, and with attorneys involved in the action plan litigation and professional development. The ability to generalize this research is limited by the fact that it only deals with legislation and policy in one state and with principals in one region of that state. Students participating in an education law class at East Carolina University in fall 2002 identified the principals surveyed.

Findings

How did local school boards respond to the requirement to create policy to govern the creation of action plans for teachers in their schools that were not classified as low-performing? Through a survey of all school boards and a review of the policies created in response to NCGS 115C-333, it was discovered that the policies created by 111 of the 117 boards were exact duplications of a model policy developed by the North Carolina School Board's Association. Five of the other local policies included only minor changes to the model policy. The lone remaining policy included more changes, but was essentially the same as the model policy.

Are principals using action plans in eastern North Carolina? The fall 2002 survey revealed that 100% of the principals were aware of the legislation requiring them to write an action plan for any teacher who was evaluated as below standard or unsatisfactory. Surveys conducted prior to 2002 had revealed that less than 100% of principals were aware of requirements embodied in NCGS 115C-333. When asked if they had written any action plans, 38 of the 57 (65%) principals surveyed indicated that they had written at least one action plan. Principals with more experience reported that they had written action plans less than those with eight or less years of administrative experience. Only 42% of the principals with more than eight years of experience reported that they had written at least one action plan. The principals with eight or less years of experience reported that 77% of them had written at least one action plan.

How have principals been prepared to write action plans in eastern North Carolina? In responding to the survey question asking them if they had had any professional development on writing action plans, 16 (28%) reported that they had had none. Research into the professional development that has been provided for principals to prepare them to write action plans revealed that local school boards and superintendents had depended on attorneys

to develop and deliver training on writing action plans. One Raleigh based law office, provided a majority of the training in eastern North Carolina. The training that was delivered in eastern North Carolina, regardless of the developer, all addressed the specific steps to be taken in writing an action plan. Those steps included the following: identify the problem, list clear goals, list specific strategies to be followed, identify the manner in which evidence will be collected, and establish a time line for the completion of a plan.

Do principals feel that action plans are useful tools that assist them in their efforts to improve learning in the school? When surveyed about the usefulness of action plans to improve learning in their schools, most of the eastern North Carolina principals surveyed (82%) reported that they thought action plans were useful tools. Only 2 (3%) of the surveyed principals felt that action plans were not useful and 8 (15%) were uncertain about their usefulness.

What are the potential legal implications for principals using action plans? The potential legal implication for principals using action plans include the all the implications associated with teacher valuation and employment that existed in North Carolina prior to the passage of NCGS 115C-333. The possible implications associated with evaluation and employment action linked with the use of action plans revolve around possible challenges to the use of action plans in general and the events associated with employment action in which action plans are used. As reported in the December 9, 1998, issue of *Education Week*, "the first teachers to be fired under North Carolina's 2-year-old accountability program (fought) their dismissals and, in the process, (provided) an early illustration of the struggles that may lie ahead as states push administrators and teachers to take more responsibility for student achievement (*NCAE News Bulletin*)." These teachers were members of the North Carolina Association of Educators (NCAE) who supported them in this litigation. In the *Education Week* article, the NCAE executive director stated, "I think we are going to get into even more legal battles about property rights between state and local officials." The article also reported, "North Carolina may be the first state to fire a teacher under its performance-based accountability program...." This case was settled when one of the teachers retired and the other was given a non-teaching job in the district. No litigation has occurred since 1999. The 2002 survey of principals asked principals if they felt that their superintendents supported the use of action plans and if they thought the action plans were useful tools to improve learning in their schools. Only one principal reported the superintendent did not support the use of action plans. Two other principals reported that they did not know if the superintendent supported the use of action plans or not. Regarding their feelings about the usefulness of action plans, 82% of the principals indicated that they felt they were useful tools in improving learning in their schools.

None of the surveyed principals reported that they had been involved in any legal action as a result of the use of an action plan. Seven principals (7) reported that legal action had been threatened. Interviews with selected principals revealed that action plans were generally used with teachers who were within the first five years of their career or teachers who were nearing the end of their career. North Carolina beginning teachers were not tenured until the completion of their fourth year. Unless a principal felt that a non-tenured teacher must be terminated during the contact year, there was no need to write an action plan. Veteran teachers who were near retirement, however, generally had obtained tenure. The interviews with principals revealed that teacher who threatened legal action as a result of an action plan noted harassment and age discrimination as concerns.

Summary and Implications

This research attempted to discover how legislation and policy initiatives in North Carolina had impacted principals as teacher evaluators and in employment actions. One of the most interesting findings was how local school boards developed the policy that would guide how action plans would be created for teachers who did not work in low-performing schools. Most of the action plans written in North Carolina were for teachers who did not work in low-performing schools. The fact that this policy followed the model created by the state's school board association seems to indicate that the association may have significant influence over the creation of local policy. Further study of how closely association model policies are followed by local boards would show the extent of the association's influence.

The use of action plans has increased over the past three years. Surveyed principals and superintendents feel that action plans are a useful tool that they can use to improve the quality of instruction in a district's schools. This indicates that action plans have become an accepted method for dealing with the pressure school administrators feel to improve learning in schools as measured by the state's testing program. The absence of litigation since the initial court challenge to using an action plan to terminate an employee may have created a sense of security that has lead to increased use. Continued action by NCAE representatives who intervene when teachers are place on action plans and the possibility that action plans can be used to terminate teachers on grounds that are protected by statute or the Constitution reveal the need for caution. The 2002 survey of principals revealed that principals who are early in their administrative careers were more likely to write an action plan than principals who had more than eight years of experience. The implication of this finding is principal preparation program have a duty to equip their students an updates understanding of the legal implications of current and future litigation impacting the practice. It also indicates a need for preparation programs to examine the manner in which they prepare students to work with teacher to improve their performance.

This research had a number of limitations. Those limitation could be addressed though future studies that include a larger sample size. A sample that surveyed principals from across the state would allow these findings to be tested against principals' perceptions from other regions of the state. A study that examines how accountability has impacted teacher evaluation and employment across the nation would put the North Carolina program in perspective. With the enactment of the "No Child Left Behind Act," it seems evident that testing and accountability will be issues well into the future.

References

- Coleman, J., Campbell, E., Hobson, C., McPartland J., Mood, A., Weinfeld, F., & York, R., (1966). *Equality of educational opportunity*. Washington, DC: U S Government Printing Office. (ERIC Document Reproduction No. ED 012275)
- Haller, E., & Kleine, P., (2001). *Using educational research: A school administrator's guide*. New York: Longman.
- N.C. teachers battle state over firings. (1999, February). NCAE News Bulletin, 13, 8.



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